

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service Support)	

**Notice of Inquiry Regarding Issues Raised by the United States Court of Appeals for
the Tenth Circuit in its February 23, 2005, Qwest II Decision**

Reply Comments of the Wyoming Public Service Commission

June 8, 2009

The Wyoming Public Service Commission (WyPSC) submits these reply comments in the matter of the Federal Communications Commission's (FCC or the Commission) notice of inquiry (NOI) concerning the remand by the United States Court of Appeals for the Tenth Circuit (Tenth Circuit) in *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (*Qwest II*). On May 8, 2009, the WyPSC filed initial comments in this proceeding (*Initial Comments*). In accordance with the FCC's March 6, 2009, response to the Tenth Circuit, the WyPSC looks forward to the release of a further notice of proposed rulemaking (FNPRM) no later than December 15, 2009, and a final order no later than April 16, 2010.

The Tenth Circuit's remand places before the Commission the obligation to provide for a high-cost universal service fund that is sufficient to promote reasonable comparability between rural and urban rates. These core principles are set out in § 254(b) of the Telecommunications Act of 1996 (the 1996 Act) and recognized by the Court in *Qwest II*.

In its *Initial Comments*, the WyPSC recommended using route miles per subscriber as a tool for identifying and measuring low population density. The WyPSC recommended, and we still recommend, that, when route miles per subscriber indicate very low population density, the Commission should set a lower funding benchmark of 125 percent. To this end, the WyPSC recommends the Commission quickly issue an FNPRM and then adopt new rules as soon as possible to make more support available, but *only* where it is needed to assist in non-rural carrier service areas characterized by low population density.

The WyPSC urges the Commission to keep a very clear and tight focus in this proceeding. Although the Tenth Circuit did not remand the entire system of federal universal service funding to the Commission, several comments advocate broadening this proceeding to address unrelated problems with the federal cost model, to promote broadband universal

service, and to revamp support for mobile service providers. Some even advocate varying degrees of general universal service reform, including emphasizing one-size-fits-all reforms, broadening the proceeding by addressing both rural and non-rural carriers. The WyPSC discourages broadening the proceeding beyond the issue identified by the Tenth Circuit. In remanding this matter to the Commission, the Tenth Circuit did not describe a smorgasbord of unrelated issues or invite random expansion of the subject to address every conceivable issue concerning universal service. In this regard, the WyPSC supports the observation of the National Exchange Carrier Association (NECA) emphasizing the significant difference between rural carriers and non-rural carriers. One-size-fits-all recommendations will not work well, and the Court has not invited us to change the character of supported services. The WyPSC urges recognition of the clearly established fact that non-rural carriers such as Qwest in Wyoming do serve customers in very sparsely populated high-cost rural areas, and that existing universal service funding does not properly address this uncommon but all too real anomaly.¹

This Proceeding Should Focus on Sufficiency and Comparability

The WyPSC earnestly believes this proceeding should focus on sufficiency and comparability. The WyPSC has repeatedly clarified that it has rebalanced access and local exchange rates to reflect cost of service, eliminated the flow of implicit support from urban to rural areas, and implemented a state universal service fund. It remains, as we have said, a challenge to provide “plain old telephone service” (POTS) at reasonably comparable rates for many customers in rural high-cost areas of Wyoming. For them, thirteen years after the passage of the 1996 Act, this thorny and fundamental problem persists and broadband universal service is only a dream. For the foreseeable future, the very high cost of service in rural Wyoming means that keeping the promise of voice grade access to critical network functions like 911 remains problematic, and must be addressed before turning to broadband universal service.

AT&T on the other hand, seems to live in a completely different world. The WyPSC respectfully submits that the vision statement in AT&T’s initial comment is not grounded in the reality many customers in rural high-cost areas must confront.

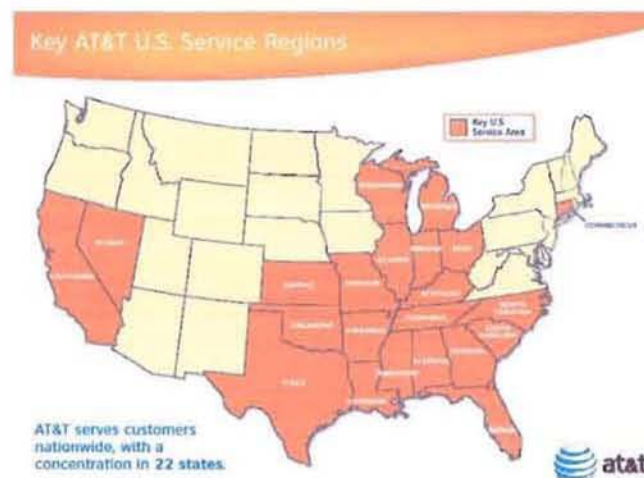
In these comments, AT&T sets out a vision, based on the guiding principles enunciated by Congress in section 254(b), for ensuring the continued relevance of the Commission’s universal service program. Ultimately, that vision requires the transition of all high-cost funding from the legacy POTS business model to support for business models that are viable in the hyper-connected digital world in which growing numbers of us live, thereby not only preserving but also advancing universal service as required by Congress and the Tenth Circuit. As part of this transition, the Commission must move toward a support mechanism that is narrowly targeted to rural and other high-cost areas, and that prepares for the end of the POTS model. (Footnote omitted)²

¹ For example, Qwest’s Lusk, Wyoming, exchange has a local loop density of less than one access line per square mile.

² AT&T, pages 3, 4.

As stated in its *Initial Comments*, the WyPSC does not oppose the idea of working on ways to create funding for broadband. We hope, however, that the challenges of broadband deployment will not prevent adequate and timely consideration of a solution to Wyoming's more basic universal service funding needs. Customers living in rural high-cost areas served by Wyoming's non-rural carrier do not live in a "hyper-connected digital world" and they are not prepared for the end of the POTS model.³ For them, the POTS model is still not a universal service success. It is expensive to serve many such customers. The idea of upping the ante to require provision of broadband universal service runs the extreme danger of leaving those customers bypassed on the information superhighway.

The WyPSC argues that basic universal service in high-cost rural areas served by Wyoming's non-rural carrier is not "a rapidly obsolescing business model."⁴ It is important that comments are at least based upon some degree of familiarity with the challenges to providing service in sparsely populated, high-cost conditions in a state like Wyoming before suggesting policy for Wyoming. The map below⁵ emphasizes this point when taking into account the population density and high-cost support statistics found in the WyPSC's *Initial Comments*. Note that AT&T is not an incumbent local exchange carrier in Wyoming.



As illustrated in our *Initial Comments*, Wyoming faces a set of unique and extremely difficult universal service problems which may not be familiar to much of the rest of the nation.

The WyPSC does not disagree with AT&T that "the Commission should condition the receipt of federal high-cost support on reductions in intrastate switched access charges."⁶

³ AT&T, page 4.

⁴ Id.

⁵ Source: http://www.att.com/Common/merger/files/pdf/22_state_map.pdf

⁶ AT&T, page 6.

However, as detailed in the WyPSC's *Initial Comments*, Wyoming long ago rebalanced access and local exchange rates to eliminate implicit support from access and to adjust all urban and rural rates to reflect the cost of service. Furthermore, Wyoming has had its own state universal service fund for over a decade. The funding benchmark for the Wyoming universal service fund is \$33.61 before applicable taxes and surcharges. Thus, the Wyoming universal service fund requires all Wyoming subscribers to contribute to explicit universal service support, with average support per line provided by the fund of approximately \$5.54 and the maximum support exceeding \$34 per access line per month. (Our *Initial Comment* shows the non-rural carrier residential basic rate in high-cost areas is \$49.50 per month, including applicable taxes and surcharges, compared to the FCC's calculation of the national weighted average of \$25.63, including taxes and surcharges.) This is a heavy burden for Wyoming's small population of ratepayers to bear. This further shows that the federal fund is not as yet sufficient for its intended purpose and does not provide for comparable rates and quality. The following statement by AT&T is inapplicable to Wyoming:

It is entirely possible that there is "sufficient" universal service support sloshing around the existing federal and state, explicit and implicit access mechanisms and that no additional support is necessary to comply with Congress's universal service mandates.⁷

Although many comments express concern about the universal service fund becoming too big, sufficiency and comparability are not optional. They are the law. Further, the WyPSC would refer to its *Initial Comments* to remind the Commission that the amount of money that would be involved in implementing a subscribers per route mile density test and thereafter providing sufficient support to achieve comparability for non-rural carrier customers in high-cost rural areas of Wyoming is relatively small. Our suggested solution provides a way to address the particular problem Wyoming faces, thereby squarely confronting the problem the Tenth Circuit has again laid before the Commission. It is not a blunt instrument that would fix the problem by causing the fund to balloon out of control. It is conceptually surgical in nature -- fixing the problem at hand without creating more.

To contemplate filling broadband gaps with universal service money brings to mind the nearly \$8 billion in federal stimulus money to become available under the American Recovery and Reinvestment Act. That is a large amount of money, which will go a long way to slaking the thirst expressed in many comments for federal support to build broadband. The Wyoming PSC takes strong exception to any implication that there is money "sloshing" around in Wyoming to comply with universal service mandates. Please refer to the WyPSC's *Initial Comments*, Joint Board Monitoring Reports, FCC data, and other public sources for additional information about the flow of universal service funds, contributions into the fund, and uses of universal service. This uninformed comment advances a possibility but no hard facts. It illustrates that Wyoming's problems appear to be only an afterthought for many.

The WyPSC does not take issue with broadband universal service concepts but objects to expanding this particular proceeding to undertake a general reform of universal

⁷ AT&T page 15.

service for broadband. The Cellular Telecommunications Industry Association (CTIA), among others, raises the issue of expanding the proceeding:

The experience of the past ten years makes clear that consumers demand and need access to mobile broadband services. To reflect these changes, and to respond to the Tenth Circuit's remand, the Commission must reform the universal service mechanisms to focus on mobile and broadband services.⁸

Although broadband and mobile broadband services promoted by their suppliers are inarguably important, they are not part of the problem the Tenth Circuit has laid before the Commission to solve. These services are simply not parts of a viable business plan that is challenged to provide basic universal service to many consumers in rural, high-cost areas. They should not be allowed to broaden and blur the focus of the proceeding. Our charge is to focus on making a sufficient fund to enable affordable voice grade service. It is critical that planning for broadband or mobile broadband universal service be undertaken separately. The WyPSC urges the Commission to focus on the actual task set by the Tenth Circuit, which is to provide a sufficient fund to achieve comparability for basic services. The Commission should not be distracted by other problems that are already receiving significant attention more appropriately elsewhere.

Make More Support Available Only Where It Is Needed

The WyPSC recommends making more support available only where it is needed by identifying non-rural carrier service areas characterized by low population density. We recommend using route miles per subscriber as a proxy for measuring low population density. We further recommend setting a lower funding benchmark in such instances. Addressing one of the major factors of production -- economies of scale, or density -- is an important feature of other comments. For example, Embarq states:

The cost of providing telecommunications service varies significantly depending on population density, the distance over which infrastructure must be deployed, topography, and socioeconomic conditions.⁹

Furthermore:

Embarq proposes that the Commission use household density, multiplied by the number of households, as the metric for allocating high-cost support.¹⁰

The WyPSC recommends using route miles per subscriber as a proxy for household density because, as Embarq notes,

sparingly settled areas will also entail higher costs to serve because facilities will need to be constructed over far longer distances to reach end users¹¹

⁸ CTIA, page ii.

⁹ Embarq, page 11.

¹⁰ Id. page 2.

Quickly Issue an FNPRM and Adopt New Rules

The Commission's NOI will have collected initial and reply comments by June 8, 2009. The Commission has represented to the Tenth Circuit that it will continue its response to the remand and address sufficiency and comparability by releasing a further notice of proposed rulemaking (FNPRM) no later than December 15, 2009, and a final order at least by April 16, 2010. The WyPSC respectfully submits that it has offered a simple, effective, fair, and relatively inexpensive resolution of the matter, and that there are important supporting comments made by others.¹² The WyPSC recognizes that there is universal service work to be done to refine the FCC's cost model for non-rural carrier universal service, to implement broadband universal service, and reform mobile universal service, as mentioned in many other comments.

However, by maintaining focus and putting into place the reasonable solution that the WyPSC recommends, harmful delay in implementing that piece of the puzzle is avoided. Universal service was mandated by Congress in 1996, over 13 years ago. Wyoming consumers have been left long enough and far enough behind. The Commission should immediately release the FNPRM, focusing exclusively on sufficiency and comparability of basic service. By releasing the FNPRM immediately with short comment periods, the Commission could adopt new rules much sooner than April 16, 2010. Continuing the current policy of making universal service support available for a POTS network that can be scaled up for broadband is the first step. Simply put, the plan is working but it needs a little extra attention in the most difficult situations, like the situation faced by the rural customers in Wyoming. They live and work in very sparsely populated areas served by the non-rural carrier where economies of scale are difficult to achieve and costs are very high.

Even Though There is a Significant Difference Between Rural Carriers and Non-Rural Carriers, Wyoming's Non-Rural Carrier, Qwest, Serves a Significant Number of Customers in Rural, High-Cost Areas

The WyPSC wishes to offer support for a comment by NECA, and also to offer what we hope will serve as a clarifying comment. NECA states:

The Commission Should Refrain From Considering Issues Relating to Rural Support Mechanisms in this Non-Rural Proceeding.¹³

The WyPSC agrees with and supports NECA's references on this subject. The nomenclature can be confusing, but there should be no confusion about the fact that Qwest, a non-rural carrier, serves a large portion of the customers in high-cost rural areas of Wyoming. There is a substantial difference between rural and non-rural carriers, however. The WyPSC agrees with NECA that this fact should not be neglected in considering and rejecting some comments that

¹¹ Id. page 12.

¹² NASUCA, page 3.

¹³ NECA, page 5.

would encourage turning this docket into a vehicle for wide-ranging universal service reform. NECA said, and the WyPSC agrees, that:

The Rural Task Force (RTF) made a comprehensive study of market and operational differences between rural and non-rural carriers in 2000, which made a strong case for separate consideration of rural and non-rural support mechanisms, and;

Separate Consideration of Rural Telephone Company Characteristics is Especially Important in Coordinating High-Cost Support Reform and National Broadband Deployment Plans.¹⁴

NECA's comments dovetail with the WyPSC's recommendations and understanding of the situation that it has described. The WyPSC urges the Commission to maintain focus in this proceeding on the remand issues of sufficiency and comparability for non-rural carrier universal service.

A Final Test

As it reviews the comments and reply comments submitted in this case, the Commission must conclude, as we do, that the suggestions to broaden the focus of this matter would contribute nothing to solving the problem at hand given to us by the Tenth Circuit in the *Qwest II* remand.

Conclusion

The WyPSC urges the Commission to maintain the focus of this proceeding squarely on the comparability and sufficiency issues identified by the Tenth Circuit in *Qwest II* and by the WyPSC in the many filings it has made – consistently and accurately describing Wyoming's persistent high costs, its success in implementing truly cost-based rates, and its success in establishing the Wyoming universal service fund. If this NOI reveals a consensus to address model or broadband issues, then the WyPSC urges the FCC in the strongest possible terms to confront these and other issues in separate proceedings and not here. We urge the Commission to use the upcoming FNPRM to address problems with comparability and sufficiency identified in *Qwest II*. Wyoming's issues are unique in most aspects, and as described, may be rather simple and relatively inexpensive to address in the timeframes to which the FCC is committed.

¹⁴ NECA, page 6.

The WyPSC appreciates the FCC's earnest work on this issue, and we appreciate the opportunity to discuss potential issues to explore and decide in the upcoming further notice of proposed rulemaking.

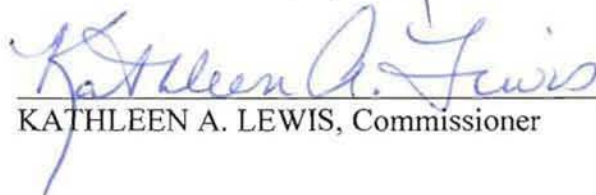
Respectfully submitted June 8, 2009.



ALAN B. MINIER, Chairman



STEVE OXLEY, Deputy Chairman



KATHLEEN A. LEWIS, Commissioner